There were two men in one city; the one rich, and the other poor. The rich man had exceeding many flocks and herds: But the poor man had nothing, save one little ewe lamb, which he had bought and nourished up: and it grew up together with him, and with his children: it did eat of his own meat, and drank of his own cup, and lay in his bosom, and was unto him as a daughter. And there came a traveller unto the rich man, and he spared to take of his own flock and of his own herd, to dress for the wayfaring man that was come unto him; but took the poor man's lamb, and dressed it for the man that was come to him.

Naboth the Jezreelite had a vineyard which was in Jezreel, hard by the palace of Ahab king of Samaria. And Ahab spake unto Naboth, saying, Give me thy vineyard, that I may have it for a garden of herbs, because it is near unto my house: and I will give thee for it a better vineyard than it; or, if it seem good to thee, I will give thee the worth of it in money. And Naboth said to Ahab, The Lord forbid it to me, that I should give the inheritance of my fathers unto thee.

INTRODUCTION

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IT IS proper for more reasons than the most obvious one that I should open this series of Charles R. Walgreen Lectures by quoting a passage from the Declaration of Independence. The passage has frequently been quoted, but, by its weight and its elevation, it is made immune to the degrading effects of the excessive familiarity which breeds contempt and of misuse which breeds disgust. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." The nation dedicated to this proposition has now become, no doubt partly as a consequence of this dedication, the most powerful and prosperous of the nations of the earth. Does this nation in its maturity still cherish the faith in which it was conceived and raised? Does it still hold those "truths to be self-evident"? About a generation ago, an American diplomat could still say that "the natural and the divine foundation of the rights of man . . . is self-evident to all Americans." At about the same time a German scholar could still describe the difference between German thought and that of Western Europe and the United States by saying that the West still attached decisive importance to natural right, while in Germany the very terms "natural right" and "humanity" "have now become almost incomprehensible . . . and have lost altogether their original life and color." While abandoning the idea of natural right and through abandoning it, he continued, German thought has "created the historical sense," and thus was led eventually

to unqualified relativism.[1] What was a tolerably accurate description of German thought twenty-seven years ago would now appear to be true of Western thought in general. It would not be the first time that a nation, defeated on the battlefield and, as it were, annihilated as a political being, has deprived its conquerors of the most sublime fruit of victory by imposing on them the yoke of its own thought. Whatever might be true of the thought of the American people, certainly American social science has adopted the very attitude toward natural right which, a generation ago, could still be described, with some plausibility, as characteristic of German thought. The majority among the learned who still adhere to the principles of the Declaration of Independence interpret these principles not as expressions of natural right but as an ideal, if not as an ideology or a myth. Present-day American social science, as far as it is not Roman Catholic social science, is dedicated to the proposition that all men are endowed by the evolutionary process or by a mysterious fate with many kinds of urges and aspirations, but certainly with no natural right.

Nevertheless, the need for natural right is as evident today as it has been for centuries and even millennia. To reject natural right is tantamount to saying that all right is positive right, and this means that what is right is determined exclusively by the legislators and the courts of the various countries. Now it is obviously meaningful, and sometimes even necessary, to speak of "unjust" laws or "unjust" decisions. In passing such judgments we imply that there is a standard of right and wrong independent of positive right and higher than positive right: a standard with reference to which we are able to judge of positive right. Many people today hold the view that the standard in question is in the best case nothing but the

1. "Ernst Troeltsch on Natural Law and Humanity," in Otto Gierke, *Natural Law and the Theory of Society*, translated with Introduction by Ernest Barker, I (Cambridge: At the University Press, 1934), 201–22.

ideal adopted by our society or our "civilization" and embodied in its way of life or its institutions. But, according to the same view, all societies have their ideals, cannibal societies no less than civilized ones. If principles are sufficiently justified by the fact that they are accepted by a society, the principles of cannibalism are as defensible or sound as those of civilized life. From this point of view, the former principles can certainly not be rejected as simply bad. And, since the ideal of our society is admittedly changing, nothing except dull and stale habit could prevent us from placidly accepting a change in the direction of cannibalism. If there is no standard higher than the ideal of our society, we are utterly unable to take a critical distance from that ideal. But the mere fact that we can raise the question of the worth of the ideal of our society shows that there is something in man that is not altogether in slavery to his society, and therefore that we are able, and hence obliged, to look for a standard with reference to which we can judge of the ideals of our own as well as of any other society. That standard cannot be found in the needs of the various societies, for the societies and their parts have many needs that conflict with one another: the problem of priorities arises. This problem cannot be solved in a rational manner if we do not have a standard with reference to which we can distinguish between genuine needs and fancied needs and discern the hierarchy of the various types of genuine needs. The problem posed by the conflicting needs of society cannot be solved if we do not possess knowledge of natural right.

It would seem, then, that the rejection of natural right is bound to lead to disastrous consequences. And it is obvious that consequences which are regarded as disastrous by many men and even by some of the most vocal opponents of natural right do follow from the contemporary rejection of natural right. Our social science may make us very wise or clever as

regards the means for any objectives we might choose. It admits being unable to help us in discriminating between legitimate and illegitimate, between just and unjust, objectives. Such a science is instrumental and nothing but instrumental: it is born to be the handmaid of any powers or any interests that be. What Machiavelli did apparently, our social science would actually do if it did not prefer—only God knows why—generous liberalism to consistency: namely, to give advice with equal competence and alacrity to tyrants as well as to free peoples.[2] According to our social science, we can be or become wise in all matters of secondary importance, but we have to be resigned to utter ignorance in the most important respect: we cannot have any knowledge regarding the ultimate principles of our choices, i.e., regarding their soundness or unsoundness; our ultimate principles have no other support than our arbitrary and hence blind preferences. We are then in the position of beings who are sane and sober when engaged in trivial business and who gamble like madmen when confronted with serious issues—retail sanity and wholesale madness. If our principles have no other support than our blind preferences, everything a man is willing to dare will be per-

2. "Vollends sinnlos ist die Behauptung, dass in der Despotie keine Rechtsordnung bestehe, sondern Willkür des Despoten herrsche . . . stellt doch auch der despotisch regierte Staat irgendeine Ordnung menschlichen Verhaltens dar. . . . Diese Ordnung ist eben die Rechtsordnung. Ihr den Charakter des Rechts abzusprechen, ist nur eine naturrechtliche Naivität oder Überhebung. . . . Was als Willkür gedeutet wird, ist nur die rechtliche Möglichkeit des Autokraten, jede Entscheidung an sich zu ziehen, die Tätigkeit der untergeordneten Organe bedingungslos zu bestimmen und einmal gesetzte Normen jederzeit mit allgemeiner oder nur besonderer Geltung aufzuheben oder abzuändern. Ein solcher Zustand ist ein Rechtszustand, auch wenn er als nachteilig empfunden wird. Doch hat er auch seine guten Seiten. Der im modernen Rechtsstaat gar nicht seltene Ruf nach Diktatur zeigt dies ganz deutlich" (Hans Kelsen, *Algemeine Staatslehre* [Berlin, 1925], pp. 335–36). Since Kelsen has not changed his attitude toward natural right, I cannot imagine why he has omitted this instructive passage from the English translation (*General Theory of Law and State* [Cambridge: Harvard University Press, 1949], p. 300).

missible. The contemporary rejection of natural right leads to nihilism—nay, it is identical with nihilism.

In spite of this, generous liberals view the abandonment of natural right not only with placidity but with relief. They appear to believe that our inability to acquire any genuine knowledge of what is intrinsically good or right compels us to be tolerant of every opinion about good or right or to recognize all preferences or all "civilizations" as equally respectable. Only unlimited tolerance is in accordance with reason. But this leads to the admission of a rational or natural right of every preference that is tolerant of other preferences or, negatively expressed, of a rational or natural right to reject or condemn all intolerant or all "absolutist" positions. The latter must be condemned because they are based on a demonstrably false premise, namely, that men can know what is good. At the bottom of the passionate rejection of all "absolutes," we discern the recognition of a natural right or, more precisely, of that particular interpretation of natural right according to which the one thing needful is respect for diversity or individuality. But there is a tension between the respect for diversity or individuality and the recognition of natural right. When liberals became impatient of the absolute limits to diversity or individuality that are imposed even by the most liberal version of natural right, they had to make a choice between natural right and the uninhibited cultivation of individuality. They chose the latter. Once this step was taken, tolerance appeared as one value or ideal among many, and not intrinsically superior to its opposite. In other words, intolerance appeared as a value equal in dignity to tolerance. But it is practically impossible to leave it at the equality of all preferences or choices. If the unequal rank of choices cannot be traced to the unequal rank of their objectives, it must be traced to the unequal rank of the acts of choosing; and this means eventually that genuine choice, as distinguished from spurious or despicable choice, is

nothing but resolute or deadly serious decision. Such a decision, however, is akin to intolerance rather than to tolerance. Liberal relativism has its roots in the natural right tradition of tolerance or in the notion that everyone has a natural right to the pursuit of happiness as he understands happiness; but in itself it is a seminary of intolerance.

Once we realize that the principles of our actions have no other support than our blind choice, we really do not believe in them any more. We cannot wholeheartedly act upon them any more. We cannot live any more as responsible beings. In order to live, we have to silence the easily silenced voice of reason, which tells us that our principles are in themselves as good or as bad as any other principles. The more we cultivate reason, the more we cultivate nihilism: the less are we able to be loyal members of society. The inescapable practical consequence of nihilism is fanatical obscurantism.

The harsh experience of this consequence has led to a renewed general interest in natural right. But this very fact must make us particularly cautious. Indignation is a bad counselor. Our indignation proves at best that we are well meaning. It does not prove that we are right. Our aversion to fanatical obscurantism must not lead us to embrace natural right in a spirit of fanatical obscurantism. Let us beware of the danger of pursuing a Socratic goal with the means, and the temper, of Thrasymachus. Certainly, the seriousness of the need of natural right does not prove that the need can be satisfied. A wish is not a fact. Even by proving that a certain view is indispensable for living well, one proves merely that the view in question is a salutary myth: one does not prove it to be true. Utility and truth are two entirely different things. The fact that reason compels us to go beyond the ideal of our society does not yet guarantee that in taking this step we shall not be confronted with a void or with a multiplicity of incompatible and equally justifiable principles of "natural right." The grav-

ity of the issue imposes upon us the duty of a detached, theoretical, impartial discussion.

The problem of natural right is today a matter of recollection rather than of actual knowledge. We are therefore in need of historical studies in order to familiarize ourselves with the whole complexity of the issue. We have for some time to become students of what is called the "history of ideas." Contrary to a popular notion, this will aggravate rather than remove the difficulty of impartial treatment. To quote Lord Acton: "Few discoveries are more irritating than those which expose the pedigree of ideas. Sharp definitions and unsparing analysis would displace the veil beneath which society dissembles its divisions, would make political disputes too violent for compromise and political alliances too precarious for use, and would embitter politics with all the passions of social and religious strife." We can overcome this danger only by leaving the dimension in which politic restraint is the only protection against the hot and blind zeal of partisanship.

The issue of natural right presents itself today as a matter of party allegiance. Looking around us, we see two hostile camps, heavily fortified and strictly guarded. One is occupied by the liberals of various descriptions, the other by the Catholic and non-Catholic disciples of Thomas Aquinas. But both armies and, in addition, those who prefer to sit on the fences or hide their heads in the sand are, to heap metaphor on metaphor, in the same boat. They all are modern men. We all are in the grip of the same difficulty. Natural right in its classic form is connected with a teleological view of the universe. All natural beings have a natural end, a natural destiny, which determines what kind of operation is good for them. In the case of man, reason is required for discerning these operations: reason determines what is by nature right with ultimate regard to man's natural end. The teleological view of the universe, of which the teleological view of man forms a part, would seem

to have been destroyed by modern natural science. From the point of view of Aristotle—and who could dare to claim to be a better judge in this matter than Aristotle?—the issue between the mechanical and the teleological conception of the universe is decided by the manner in which the problem of the heavens, the heavenly bodies, and their motion is solved.[3] Now in this respect, which from Aristotle's own point of view was the decisive one, the issue seems to have been decided in favor of the nonteleological conception of the universe. Two opposite conclusions could be drawn from this momentous decision. According to one, the nonteleological conception of the universe must be followed up by a nonteleological conception of human life. But this "naturalistic" solution is exposed to grave difficulties: it seems to be impossible to give an adequate account of human ends by conceiving of them merely as posited by desires or impulses. Therefore, the alternative solution has prevailed. This means that people were forced to accept a fundamental, typically modern, dualism of a nonteleological natural science and a teleological science of man. This is the position which the modern followers of Thomas Aquinas, among others, are forced to take, a position which presupposes a break with the comprehensive view of Aristotle as well as that of Thomas Aquinas himself. The fundamental dilemma, in whose grip we are, is caused by the victory of modern natural science. An adequate solution to the problem of natural right cannot be found before this basic problem has been solved.

Needless to say, the present lectures cannot deal with this problem. They will have to be limited to that aspect of the problem of natural right which can be clarified within the confines of the social sciences. Present-day social science rejects natural right on two different, although mostly combined, grounds; it rejects it in the name of History and in the name of the distinction between Facts and Values.

3. *Physics* 196^{a}25 ff., 199^{a}3–5.